

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY OF EMERYVILLE and the
EMERYVILLE REDEVELOPMENT
AGENCY,

Plaintiffs,

v.

ELEMENTIS PIGMENTS, *et al.*,

Defendants.

No. C 99-03719 WHA

**ORDER DENYING ALL
PENDING MOTIONS AND
VACATING HEARING**

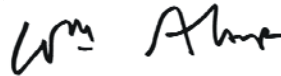
All pending motions are **DENIED**. The parties should take up the issue with the state court as the trial date gets closer. Res judicata and collateral estoppel are defenses to be raised by Sherwin-Williams in the state court action. The state court does not need a federal court telling it how to run its cases, especially when Sherwin-Williams can, as the November 2009 trial date approaches, move for a continuance before the state court. If the state court refuses to permit the defense of res judicata or collateral estoppel or to continue the trial, then presumably the state court will have a good reason, such as, for example, a failure to have pled such an affirmative defense. This Court has done the best it can to explain what its prior judgment did and did not cover. Based on that, motions ought to be made to the state court when the time comes but the last thing this Court will do is to tell the state court how to manage its cases.

As for the Ninth Circuit, there is no point in a stay being issued by this Court. No matter which way the issue is resolved in state court, one side or the other may be disadvantaged

1 and/or surprised by an eventual ruling in the Ninth Circuit on this Court's declaratory judgment.
2 Due to this, the state court might wish to postpone the trial until the Ninth Circuit sorts it out.
3 Maybe. But also maybe not. *That is up to the state court.* Again, the simple answer may be a
4 wholly procedural one, such as a failure or estoppel to raise the defense in state court. Counsel
5 are encourage to raise the overall scheduling problem with the state court as the trial date
6 approaches but it seems too soon now to panic. Superior Court Judge Jon Tigar is excellent and
7 will fairly and wisely rule. At all events, all motions made by both sides are devoid of any
8 merit and are **DENIED**. The hearing scheduled for April 9, 2009 is hereby **VACATED**.

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10 **IT IS SO ORDERED.**

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12 Dated: April 7, 2009



13 WILLIAM ALSUP
14 UNITED STATES DISTRICT JUDGE
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